

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-1773-IWD-E **TCEQ ID:** RN100214493 **CASE NO.:** 34898
RESPONDENT NAME: New Waverly Ventures Ltd. Co.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: New Waverly Ventures, located on the east side of United States Highway 75, approximately three miles north of New Waverly, Walker County</p> <p>TYPE OF OPERATION: Industrial wastewater treatment system</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 7, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lynley Doyen, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-1364; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Lawrence Dobraski, Manager, New Waverly Ventures Ltd. Co., P.O. Box 368, New Waverly, Texas 77358 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: August 30, 2007</p> <p>Date of NOV/NOE Relating to this Case: October 22, 2007 (NOE)</p> <p>Background Facts: This was a routine record review.</p> <p>WATER</p> <p>1) Failed to comply with the permitted effluent limitations for chemical oxygen demand, total suspended solids ("TSS"), and fecal coliform bacteria [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001905000, Effluent Limitations and Monitoring Requirements No. 1].</p> <p>2) Failed to collect and analyze samples for each parameter at the minimum frequency specified in the permit. Specifically, samples were not collected and analyzed for biochemical oxygen demand, TSS, oil and grease, and fecal coliform bacteria during the months of September 2006, November 2006, and February 2007, although discharges had occurred during these months [30 TEX. ADMIN. CODE §§ 305.125(1) and 319.5(b) and TPDES Permit No. WQ0001905000, Effluent Limitations and Monitoring Requirements No. 1].</p>	<p>Total Assessed: \$7,515</p> <p>Total Deferred: \$1,503 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$6,012</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that all permitted parameters are collected and analyzed at the minimum required frequencies;</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision a., as described in Ordering Provision d. below;</p> <p>c. Within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0001902000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall be in accordance with Ordering Provision d. below; and</p> <p>d. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and c.</p>

Additional ID No(s): WQ0001905000



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

TCEQ

DATES	Assigned	29-Oct-2007	Screening	1-Nov-2007	EPA Due	
	PCW	1-Nov-2007				

RESPONDENT/FACILITY INFORMATION

Respondent	New Waverly Ventures Ltd. Co.		
Reg. Ent. Ref. No.	RN100214493		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	34898	No. of Violations	2	
Docket No.	2007-1773-IWD-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Lynley Doyen	
Multi-Media		EC's Team	Enforcement Team 1	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$4,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 69% Enhancement Subtotals 2, 3, & 7 \$3,105

Notes: The penalty is enhanced due to 13 self-reported monthly effluent violations and two NOV's with violations not same or similar to those cited in this action.

Culpability Subtotal 4 \$0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Subtotal 5 \$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

Total EB Amounts \$1,506 0% Enhancement* Subtotal 6 \$0
Approx. Cost of Compliance \$10,560 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$7,605

OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommend reduction in penalty so that self-reported effluent violations will not overly-impact the penalty amount and an enhancement to capture avoided costs associated with the violations.

Final Penalty Amount \$7,515

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$7,515

DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

Adjustment -\$1,503

PAYABLE PENALTY

\$6,012

Screening Date 1-Nov-2007

Docket No. 2007-1773-IWD-E

PCW

Respondent New Waverly Ventures Ltd. Co.

Policy Revision 2 (September 2002)

Case ID No. 34898

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN100214493

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	13	65%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 69%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

The penalty is enhanced due to 13 self-reported monthly effluent violations and two NOVs with violations not same or similar to those cited in this action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 69%

Screening Date 1-Nov-2007 Respondent New Waverly Ventures Ltd. Co. Case ID No. 34898 Reg. Ent. Reference No. RN100214493 Media [Statute] Water Quality Enf. Coordinator Lynley Doyen Violation Number 1 Rule Cite(s) Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001905000, Effluent Limitations and Monitoring Requirements No. 1 Violation Description Failed to comply with the permitted effluent limitations, as described in the attached table.	Docket No. 2007-1773-IWD-E PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision September 19, 2007</i>
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	Base Penalty \$10,000
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>> Environmental, Property and Human Health Matrix

	Release	Harm			
		Major Moderate Minor			
OR	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="X"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent	<input type="text" value="10%"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent	<input type="text" value="0%"/>

	Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.
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	Adjustment \$9,000
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	\$1,000
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Violation Events

Number of Violation Events <input type="text" value="3"/>	<input type="text" value="215"/>	Number of violation days
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	daily	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	<input checked="" type="text" value="X"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			

mark only one with an x

	Violation Base Penalty \$3,000
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Three quarterly events are recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
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Estimated EB Amount <input type="text" value="\$1,342"/>	Violation Final Penalty Total <input type="text" value="\$5,010"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$5,010"/>	

Economic Benefit Worksheet

Respondent New Waverly Ventures Ltd. Co.
Case ID No. 34898
Reg. Ent. Reference No. RN100214493
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$10,000	31-Jul-2006	30-Jun-2008	1.9	\$64	\$1,279	\$1,342
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to increase operational maintenance and conduct additional process controls to ensure that the Facility's effluent is compliant with permitted limitations. Date required is the date of the first noncompliant month. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$1,342

Screening Date 1-Nov-2007

Docket No. 2007-1773-IWD-E

PCW

Respondent New Waverly Ventures Ltd. Co.

Policy Revision 2 (September 2002)

Case ID No. 34898

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN100214493

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1) and 319.5(b) and TPDES Permit No. WQ0001905000, Effluent Limitations and Monitoring Requirements No. 1

Violation Description

Failed to collect and analyze samples for each parameter at the minimum frequency specified in the permit. Specifically, samples were not collected and analyzed for biochemical oxygen demand, TSS, oil and grease, and fecal coliform bacteria during the months of September 2006, November 2006, and February 2007, although discharges had occurred during these months.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to analyze effluent samples at the minimum frequencies may result in unknown effluent excursions and a release of insignificant amounts of pollutants which would not exceed levels protective of human health or environmental receptors.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 3

88 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,500

Three single events (one event for each noncompliant month) is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$164

Violation Final Penalty Total \$2,505

This violation Final Assessed Penalty (adjusted for limits) \$2,505

Economic Benefit Worksheet**Respondent** New Waverly Ventures Ltd. Co.**Case ID No.** 34898**Reg. Ent. Reference No.** RN100214493**Media** Water Quality**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling	\$200	30-Aug-2007	31-May-2008	0.8	\$8	n/a	\$8
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to update operational guidance and conduct employee training to ensure that samples are collected and analyzed at the minimum required frequencies. Date required is the record review date. Final date is the expected date of compliance.

Avoided Costs**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$360	30-Sep-2006	28-Feb-2007	0.4	\$7	\$149	\$156
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost that was avoided by failing to collect and analyze effluent samples at the required frequencies, evaluated at an average of \$20 per sample. Date required is the date when all effluent parameters were required to be analyzed during the first noncompliant month. Final date is the date when all effluent parameters were required to be analyzed during the last noncompliant month.

Approx. Cost of Compliance

\$560

TOTAL

\$164

EFFLUENT VIOLATION TABLE

New Waverly Ventures Ltd. Co.
TPDES Permit No. WQ0001905000
Docket No. 2007-1773-IWD-E

Permitted Effluent Limits	Monitoring Period End Date						
	7/31/06	8/31/06	10/31/06	11/30/06	12/31/06	4/30/07	5/31/07
COD daily max. Limit = 150 mg/L	c	c	c	171.00	c	c	c
TSS daily max. Limit = 45 mg/L	c	c	80.80	c	c	483.50	116.00
Fecal Coliform Bacteria daily max. Limit = 400 colonies per 100 mL	927	1200	c	c	936	c	c

COD = chemical oxygen demand

c = compliant

max. = maximum

mg/L = milligrams per liter

mL = milliliters

TSS = total suspended solids

Compliance History

Customer/Respondent/Owner-Operator:	CN601601651	New Waverly Ventures Ltd. Co.	Classification: AVERAGE Rating: 0.61
Regulated Entity:	RN100214493	NEW WAVERLY VENTURES	Classification: AVERAGE Site Rating: 0.61
ID Number(s):	WASTEWATER WASTEWATER WASTEWATER AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS WASTEWATER LICENSING STORMWATER	PERMIT PERMIT PERMIT PERMIT PERMIT PERMIT PERMIT PERMIT PERMIT PERMIT ACCOUNT NUMBER AFS NUM REGISTRATION EPA ID LICENSE PERMIT	WQ0001905000 TPDES0028169 TX0028169 16669 11988 17102 31891 39446 41245 WA0024A 4847100013 76685 PSDTX830 WQ0001905000 TXR05R215
Location:	LOCATED ON THE E SIDE OF US HWY 75, APPRX 3 M N OF NEW WAVERLY, WALKER CO, TX		Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	October 31, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 31, 2002 to October 31, 2007		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name: Lynley Doyen	Phone: 512-239-1364		

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? New Waverly Ventures Ltd. Co.
4. If Yes, who was/were the prior owner(s)? Louisiana-Pacific Corporation
5. When did the change(s) in ownership occur? 04/09/2003

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 11/26/2002 (176659)
 - 2 12/30/2002 (176662)
 - 3 01/24/2003 (176664)
 - 4 02/20/2003 (176636)
 - 5 03/27/2003 (176639)
 - 6 04/22/2003 (176642)
 - 7 05/30/2003 (303242)
 - 8 07/25/2003 (303243)
 - 9 08/19/2003 (303244)
 - 10 09/25/2003 (303245)
 - 11 10/17/2003 (303246)
 - 12 11/12/2003 (303247)
 - 13 12/19/2003 (303248)
 - 14 02/26/2004 (303239)
 - 15 03/22/2004 (303240)
 - 16 04/20/2004 (303241)
 - 17 05/18/2004 (355208)
 - 18 06/14/2004 (355209)
 - 19 07/20/2004 (355210)
 - 20 08/18/2004 (355211)
 - 21 10/29/2004 (383630)
 - 22 11/12/2004 (383631)

23 12/22/2004 (383632)
24 02/01/2005 (345906)
25 02/18/2005 (421450)
26 03/21/2005 (383629)
27 04/20/2005 (421451)
28 06/06/2005 (393122)
29 07/25/2005 (442443)
30 07/25/2005 (442444)
31 08/29/2005 (442445)
32 10/06/2005 (471532)
33 10/24/2005 (471533)
34 11/16/2005 (471534)
35 12/22/2005 (471535)
36 01/24/2006 (471536)
37 03/03/2006 (471530)
38 03/15/2006 (471531)
39 04/18/2006 (500167)
40 06/01/2006 (500168)
41 06/21/2006 (500169)
42 07/21/2006 (522275)
43 08/24/2006 (522276)
44 09/29/2006 (522277)
45 11/27/2006 (546957)
46 11/27/2006 (546958)
47 02/05/2007 (579346)
48 02/05/2007 (579347)
49 03/05/2007 (579342)
50 04/23/2007 (579343)
51 05/21/2007 (579344)
52 05/22/2007 (555713)
53 06/20/2007 (579345)
54 10/22/2007 (574347)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 10/31/2002 (176659)

Self Report? YES
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Classification: Moderate

Date: 02/28/2003 (176639)

Self Report? YES
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Classification: Moderate

Date: 04/30/2003 (303242)

Self Report? YES
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Classification: Moderate

Date: 02/01/2005 (345906)

Self Report? NO
Rqmt Prov: PERMIT No. 01905-000 Page 2, No. 1
Description: Failure to report the correct pH values on the Discharge Monitoring Reports (DMRs) for the months of October, November, and December of 2003.

Classification: Minor

Date: 08/31/2005 (471532)

Self Report? YES
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Classification: Moderate

Date: 09/30/2005 (471533)

Self Report? YES
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Classification: Moderate

Date: 12/31/2005 (471536)

Self Report? YES
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Classification: Moderate

Date: 07/31/2006 (522276)

Self Report? YES
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Classification: Moderate

Description: Failure to meet the limit for one or more permit parameter

Date: 08/31/2006

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Date: 10/31/2006 (546958)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 11/30/2006 (579346)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 12/31/2006

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Date: 04/30/2007 (579344)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 05/22/2007 (555713)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)[G]
30 TAC Chapter 319, SubChapter A 319.7(c)

Description: Failure to provide a certified sample refrigerator thermometer and failure to provide adequate pH buffers.

Date: 05/31/2007 (579345)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
NEW WAVERLY VENTURES
LTD. CO.
RN100214493**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1773-IWD-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding New Waverly Ventures Ltd. Co. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates an industrial wastewater treatment system at a bulk mulch bagging and bulk facility located on the east side of United States Highway 75, approximately three miles north of New Waverly in Walker County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 27, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Seven Thousand Five Hundred Fifteen Dollars (\$7,515) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Six Thousand Twelve Dollars (\$6,012) of the administrative penalty and One Thousand Five Hundred Three Dollars (\$1,503) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to comply with the permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001905000, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on August 30, 2007 and as described in the following table:

EFFLUENT VIOLATION TABLE							
Permitted Effluent Limits	Monitoring Period End Date						
	7/31/06	8/31/06	10/31/06	11/30/06	12/31/06	4/30/07	5/31/07
COD daily max. Limit = 150 mg/L	c	c	c	171.00	c	c	c
TSS daily max. Limit = 45 mg/L	c	c	80.80	c	c	483.50	116.00
Fecal Coliform Bacteria daily max. Limit = 400 colonies per 100 mL	927	1200	c	c	936	c	c

COD = chemical oxygen demand

c = compliant

max. = maximum

mg/L = milligrams per liter

mL = milliliters

TSS = total suspended solids

2. Failed to collect and analyze samples for each parameter at the minimum frequency specified in the permit, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 319.5(b) and TPDES Permit No. WQ0001905000, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on August 30, 2007. Specifically, samples were not collected and analyzed for biochemical oxygen demand, TSS, oil and grease, and fecal coliform bacteria during the months of September 2006, November 2006, and February 2007, although discharges had occurred during these months.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: New Waverly Ventures Ltd. Co., Docket No. 2007-1773-IWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that all permitted parameters are collected and analyzed at the minimum required frequencies;

- b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a., as described in Ordering Provision No. 2.d. below;
- c. Within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0001902000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall be in accordance with Ordering Provision No. 2.d. below; and
- d. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
- 4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such

an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

3/10/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

1-14-08
Date

LAWRENCE Dobraski
Name (Printed or typed)
Authorized Representative of
New Waverly Ventures Ltd. Co.

MANAGER
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

INTERMEDIATE
POST

601A 012058